




EMPLOYMENT TRIBUNALS

Claimant: Serg G P May

Respondent: Chief Constable of Hampshire Constabulary

JUDGMENT

The proceedings are dismissed following a withdrawal of the claim by the claimant.



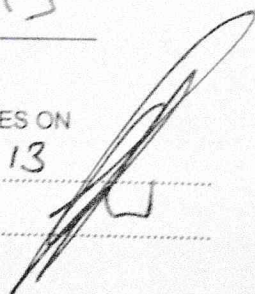
Employment Judge

29.11.13

JUDGMENT SENT TO THE PARTIES ON

09.12.13

FOR THE TRIBUNAL OFFICE





EMPLOYMENT TRIBUNALS

Claimant: Sergeant May

Respondent: Chief Constable of Hampshire Constabulary

Heard at: Southampton **On:** 3 January 2013

Before: Employment Judge Kolanko

Representation:

Claimant: In Person

Respondent: Mr G Self of Counsel

JUDGMENT having been sent to the parties on 7 January 2013 and reasons having been requested in accordance with Rule 30(5) of the Rules of Procedure 2004.

REASONS

1. This matter comes before me by way of a Pre-Hearing Review to determine as to whether the Claimant was disabled at the relevant time within the meaning of the Equality Act 2010.
2. At an earlier Case Management Discussion Hearing the Claimant was directed to provide a statement of the effect of his alleged disability on his normal day to day activities and to provide medical evidence that he was seeking to rely upon at any hearing on the issue of disability. This the Claimant has largely done albeit that one report namely from his GP was provided to the Respondent and the Tribunal on the day of this hearing.

3. At the outset of this Hearing the Respondent conceded that the Claimant was a disabled person within the meaning of the Equality Act 2010 as from 3 November 2011, on the basis that the Claimant suffered from a psychiatric disorder, alternatively mental impairment that had, by that date, lasted twelve months. Alternatively, it was conceded that as at that date it was likely to last in excess of twelve months. The Respondent therefore contended that the Tribunal had no jurisdiction to hear any complaints of disability discrimination prior to 3 November 2011.
4. In its closing submissions the Respondent indicated that it was not conceding that as at 7 September 2010 the Claimant's condition was such that it had a substantial adverse effect upon his normal day to day activities although did not seek to go behind Dr Shand's view that as of 3 November it had lasted in excess of twelve months.
5. I received in evidence a statement of evidence from the Claimant of the effect of his condition on normal day to day activities. I also heard oral evidence from the Claimant. Medical evidence was helpfully provided by the Claimant and incorporated into a bundle comprising 68 pages. Not all the documents were referred to me by the parties and primarily I was invited to consider the medical report of the Claimant's GP, Dr Hueppe, dated 20 December 2012 and a detailed Consultant's Occupational Health report from Dr Shand dated 7 December 2012. From the evidence that was received by the Tribunal I make the following relevant findings of fact in this case.
 - 5.1. During the employment with the Respondent the Claimant sometime in January 2002 alleges that he was diagnosed with post-traumatic stress disorder which had lasted in excess of twelve months and the Claimant underwent, as part of the therapy, cognitive behaviour therapy.
 - 5.2. On 29 June 2010 the Claimant was absent from work due to a back pain and attendant anxiety as a result of the problems with his back.
 - 5.3. Effectively a month later on 28 July 2010 the Claimant returned to work on reduced hours which were gradually increased.
 - 5.4. Two months later, on 7 September 2010, the Claimant was seen by Occupational Health and was there assessed fit to return to full duties. The Occupational Health nurse noting that "*Gary has reported anxiety today but did not wish to discuss this further*". I observe and interpose at this stage that the Claimant's GP report which was compiled for the purposes of these proceedings refers to that date as the date when the Claimant presented with an anxiety disorder.

- 5.5. It appears that effectively a week later on 15 September 2010, following an incident concerning a line manager on 14 September 2010, the Claimant was off sick until February 2011.
- 5.6. On 11 February 2011 the Claimant returned to work on restricted duties and it appears, according to the Claimant's evidence, although it is not supported by any of the documentation before me, sometime in March 2011 or thereabouts the Claimant alleges that he undertook six months of private psychotherapy.
- 5.7. On 7 July 2011 the Claimant saw the Consultant Occupational Health advisor, Dr Shand, and in a subsequent report which referred to the meeting on 7 July 2011, he noted that the Claimant had returned to work four months' earlier, and was experiencing problems with confidence and self-esteem, and the Claimant was noted as emotionally vulnerable and unfit to return at that stage to frontline duties. The diagnosis made by Dr Shand was that the Claimant had an anxiety disorder with a diagnosis that would resolve in the immediate short-term.
- 5.8. On 14 September 2011, two months after seeing Dr Shand, there was an incident which resulted in the Claimant going off sick again until 6 April 2012. I was informed that the Claimant was, at that juncture, prescribed *Sutalapram* but did not use it other than for initial stages as the medication did not appear to agree with him.
- 5.9. On 28 October 2011 a sick note was presented indicating that the Claimant was suffering from stress related illness precipitated by bullying and harassment at work.
- 5.10. On 3 November 2011 the Claimant had his second consultation with Dr Shand and a note prepared by Dr Shand for the purposes of these proceedings noted, in relation to that consultation, that the Claimant had been absent from work due to a re-emergence of psychological health problems. It recorded "*PS May was of the view that his direct line manager was actively seeking to impede his rehabilitation into the workplace.*" The diagnosis made by Dr Shand was of an adjustment disorder with prominent features of anxiety, and, indeed, it is that diagnosis coupled with the record of Dr Shand that that condition had been in existence for twelve months that forms the basis upon which the Respondent makes its concession within these proceedings.
- 5.11. Effectively some seven days thereafter the Claimant lodged his Employment Tribunal claim on 14 November 2011.

- 5.12. On 1 February 2012 the Claimant alleges that his GP referred him to a mental health team, again no reference is made in the medical reports enclosed, and it is not perhaps relevant to my determination of the issue in this case.
- 5.13. For completeness on 6 April 2012 the Claimant returned to work on restricted duties and was, as from November 2012, back working a full forty hour week but not on full duties. Those are basically the background facts to this case.
6. I have regard to the relevant statutory provisions, in particular Section 6 of the Equality Act 2010 which defines disability as including a mental impairment which has a substantial long term adverse effect on the Claimant's ability to carry out normal day to day activities. Schedule 1 to the Act provides more detail and guidance in relation to disability, which states in relation to long term effects that the effect of an impairment is long term if
- a) it has lasted for at least 12 months,
 - b) it is likely to last for at least 12 months,
 - c) it is likely to last the rest of life of the person affected.
7. The Claimant's evidence and submissions before me indicated that the description of the adverse effects of his condition on his normal day to day activities, which is very fully recited in his statement, occurred effectively from 14 September 2010. Whilst acknowledging that the symptoms may have commenced at that time, I am not satisfied in view of the description and the severity contained within his statement contrasted with the Claimant's instances of return to work ultimately on full working hours, that the narrative of the effects of the normal day to day activities recited in his statement are entirely accurate, although I acknowledge that at times the severity that he describes in his statement was quite substantial and significant. It was significant that the claimant did not give date details in relation to the effect of his condition on his daily activities in his statement
8. The Claimant, in his submissions before me, relies upon a medical condition encountered in 2001/2002 of post traumatic stress disorder as the basis for saying that his condition, as at that stage, was likely to recur. The position in relation to whether a condition is likely to recur for the purposes of an impairment that had ceased to have substantial adverse effect under Schedule 1 received some helpful guidance from the President, Mr Justice Underhill, in the case of *J v DLA Piper UK LLP*

reported in 2010 IRLR. At paragraph 45 he recites the following helpful guidance which it seems to me relevant in this case. He was contrasting two forms of what he described as "*extreme examples for the purposes of making his point*". He stated:


"Take the first, the case of a woman who suffers a depressive illness in her early twenties, the illness lasts for over a year, has a serious impact on her ability to carry out normal day to day activities but she makes a complete recovery and is thereafter symptom free for thirty years at which point she suffers a second depressive illness. It appears to be the case that statistically the fact of the earlier illness means that she was more likely than a person without such history to suffer a further episode of depression. Nevertheless it does not seem to us that for that reason alone she can be said during the intervening thirty years to be suffering from a mental impairment presumably to be characterised as vulnerability to depression or something of that kind. Rather the model is of someone who has suffered two distinct illnesses or impairments at different points in her life. Our second example is of a woman who over say a five year period suffered several short episodes of depression which have a substantial adverse impact on her ability to carry out normal day to day activities but who between those episodes is symptom free and does not require treatment. In such a case it may be appropriate, though the question is one which medical evidence will be required, to regard her as suffering from a mental impairment throughout the period in question i.e. even between episodes. The model would be not of a number of discrete illnesses but of a single condition producing recurrent symptomatic episodes. In the former case the issue of whether the second illness amounted to a disability would fall to be answered simply by reference to the degree and duration of the adverse effects of that illness but in the latter the woman could, if the medical evidence supported the diagnosis of a condition producing recurrent symptomatic episodes, properly claim to be disabled throughout the period even if such individual episodes were too short for its adverse effects, including deduced effects, to be regarded as long term. She could invoke Paragraph 22, Schedule 1 provided she could show the effects were likely to recur".

9. Mr Justice Underhill specified in both forms of example the importance and need of medical evidence to facilitate a conclusion to that effect by any Tribunal. In the present case there is no medical evidence to support the contention that the condition in 2002 was likely to recur and manifest itself in the symptoms subsequently experienced in 2010. Indeed, such evidence as there is, points away from such an assertion, bearing in mind that the Claimant's GP, whilst noting the earlier episode of anxiety in 2001, indicates that the Claimant suffers from an anxiety disorder which presented itself not in 2001 but September 2010. I am satisfied on the evidence before me that the Claimant's symptoms commenced as at September 2010. It is noteworthy that the Occupational Health advice, at the time, was to the effect that the Claimant was fit to resume full Level 1 duties at that stage. I interpose to observe that had the Occupational Nurse, Sally Williams been asked whether the condition at that stage was likely to last twelve months, I feel confident that she would have concluded that that was not anticipated. Similarly when the Claimant presented himself to Dr Shand on 7 July 2011 he was diagnosed as having an anxiety disorder which was expected to resolve.

10. I have, had regard to the guidance contained in the Court of Appeal decision in *Richmond Adult Community College v MacDougall* 2008 IRLR 232. The Court of Appeal reviewed the principles to be applied and approved the guidance of Mr Justice Elias in the case of *Spence v Intype Libra Ltd* [2007] All England Reports, page 261 where Mr Justice Elias gave the following guidance which is apposite to this case.

"We recognise that in practice it may be difficult for a Tribunal to disregard evidence which shows how the medical position did in fact progress but it is important that they should do so. Logically, subsequent events cannot be material, if an employer dismisses someone who has a disability likely to last twelve months, it cannot alter the position if the employee shortly thereafter makes an unexpected recovery before the twelve months has lapsed. Similarly an employee who is not disabled when the alleged unlawful conduct occurred cannot retrospectively be found to have been disabled at that time because he takes an unexpected turn for the worse. If, contrary to our view, subsequent evidence has any materiality at all it can only be to confirm or reinforce a conclusion about disability which the Tribunal has already reached by relying on the evidence which would have been available at the relevant time".

11. Applying such guidance in this case, it appears that from 7 July 2011 until the second consultation with Dr Shand on 3 November 2011, there appears to have been, what in layman's terms may be described as a deterioration in the Claimant's condition, with a diagnosis moving on to adjustment disorder with prominent features of anxiety and, as I have stated earlier, it was on the basis of that diagnosis that the concession had been made at the outset by the Respondent. In the absence of any medical evidence on the matter, it is quite impossible for me to fix a time when the deterioration was such that a change from a prognosis of expectation of early resolution turned to the likelihood of the condition lasting for at least twelve months. Given this uncertainty, I have come to the conclusion that the concession made by the Respondent, based upon the medical evidence of Dr Shand to the effect that the Claimant was disabled as from November 2011, on the basis that it had persisted for in excess of twelve months is the only proper conclusion that can be reached on the evidence before me, so I determine that the Claimant was disabled as from 3 November 2011.



Employment Judge Kolanko

REASONS SENT TO THE PARTIES ON

30 January 2013



Case Number: 3103864/2011

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS

6422/19

Case Number: 3103864/2011



EMPLOYMENT TRIBUNALS

Claimant: Sergeant May
Respondent: Chief Constable of Hampshire Constabulary
Heard at: Southampton **On:** 3 January 2013
Before: Employment Judge Kolanko

Representation:

Claimant: In person
Respondent: Mr G Self (of Counsel)

JUDGMENT AND ORDER

1. The claimant was disabled as at 3 November 2011 within the meaning of Section 6 of the Equality Act 2002 by reason of suffering a mental impairment.
2. With the consent of the respondent, the claimant's application to amend his Claim to include the allegations recited in his Schedule of Allegations served on the respondent on 11 December 2012, and as recited in the reasons attached is granted.
3. There will be a telephone Case Management Discussion held on 28 January 2013 at 10.00am (time estimate one hour) in order to give such further necessary directions as may be deemed appropriate. Details of relevant phone numbers are attached to this Order.

REASONS

1. Having determined that the claimant was disabled as at 3 November 2011, it necessarily followed that many of the claimant's complaints pre-dated a date when he became disabled. The claimant was anxious to amend his Claim form to raise additional matters of complaint many of which post dated the issuing of his Claim form on 14 November 2011. Mr Self on behalf of the respondent sought a brief adjournment to consider initially his position and to consult with the claimant in relation to the outstanding allegations that could be pursued.
2. The parties returned to agree that the outstanding allegations that were to be pursued before the Tribunal at a final hearing were those contained in a Schedule of Allegations served by the claimant upon the respondent on 11 December 2012 namely Allegations 18, 20, 22, 23, 24, 25 and 26.
3. Mr Self confirmed that Allegation 18 pre-dated the Claim form and was in time. Allegation 20, 22 and 23 post dated the Claim form however, Mr Self indicated that at the final hearing he will contend after the hearing of relevant evidence that such Claims are out of time and that it is not just and equitable to extend time. In respect of Allegations 24-26 Mr Self confirmed that they post dated the Claim form and that all such Claims were in time.
4. The claimant was anxious to enquire as to whether he could by way of relevant background evidence raise matters that preceded the Tribunal's finding of disability as from 3 November 2011. Mr Self having indicated without prejudice to his general denial of any liability owed to the claimant that if the claimant established inappropriate behaviour suffered by the claimant prior to 3 November 2011, the fact that such behaviour continued after 3 November 2011 will be clear evidence that such treatment was not linked to the claimant's disability.
5. The claimant was anxious to consider his position in this regard, and Mr Self acknowledged that it was reasonable to afford the claimant some time to obtain necessary legal advice. Mr Self reminded the Tribunal that the claimant had been seeking legal advice for a significant number of months to no effect.
6. In order to accommodate the claimant it was agreed that there would be a further telephone Case Management Discussion on 28 January 2013 commencing at 10.00am (time estimate one hour) by which time the claimant would have obtained some advice and would be available to further clarify the issues on the basis of the complaints advanced, and assist in

Case Number: 3103864/2011

relation to the giving of any necessary directions with a view to preserving the existing hearing dates 22 – 24 April 2013.

M.B. Kolanko

Employment Judge Kolanko

JUDGMENT, REASONS SENT TO THE PARTIES ON

07 JANUARY 2013

R Partridge

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS

6022/19

Case Number: 3103864/2011



EMPLOYMENT TRIBUNALS

Claimant: Sergeant May
Respondent: Chief Constable of Hampshire Constabulary
Heard at: Southampton **On:** 3 January 2013
Before: Employment Judge Kolanko

Representation:

Claimant: In person
Respondent: Mr G Self (of Counsel)

JUDGMENT AND ORDER

1. The claimant was disabled as at 3 November 2011 within the meaning of Section 6 of the Equality Act 2002 by reason of suffering a mental impairment.
2. With the consent of the respondent, the claimant's application to amend his Claim to include the allegations recited in his Schedule of Allegations served on the respondent on 11 December 2012, and as recited in the reasons attached is granted.
3. There will be a telephone Case Management Discussion held on 28 January 2013 at 10.00am (time estimate one hour) in order to give such further necessary directions as may be deemed appropriate. Details of relevant phone numbers are attached to this Order.

6422/19

Case Number: 3103864/2011



EMPLOYMENT TRIBUNALS

Claimant: Sergeant May
Respondent: Chief Constable of Hampshire Constabulary
Heard at: Southampton **On:** 3 January 2013
Before: Employment Judge Kolanko

Representation:

Claimant: In person
Respondent: Mr G Self (of Counsel)

JUDGMENT AND ORDER

1. The claimant was disabled as at 3 November 2011 within the meaning of Section 6 of the Equality Act 2002 by reason of suffering a mental impairment.
2. With the consent of the respondent, the claimant's application to amend his Claim to include the allegations recited in his Schedule of Allegations served on the respondent on 11 December 2012, and as recited in the reasons attached is granted.
3. There will be a telephone Case Management Discussion held on 28 January 2013 at 10.00am (time estimate one hour) in order to give such further necessary directions as may be deemed appropriate. Details of relevant phone numbers are attached to this Order.

REASONS

1. Having determined that the claimant was disabled as at 3 November 2011, it necessarily followed that many of the claimant's complaints pre-dated a date when he became disabled. The claimant was anxious to amend his Claim form to raise additional matters of complaint many of which post dated the issuing of his Claim form on 14 November 2011. Mr Self on behalf of the respondent sought a brief adjournment to consider initially his position and to consult with the claimant in relation to the outstanding allegations that could be pursued.
2. The parties returned to agree that the outstanding allegations that were to be pursued before the Tribunal at a final hearing were those contained in a Schedule of Allegations served by the claimant upon the respondent on 11 December 2012 namely Allegations 18, 20, 22, 23, 24, 25 and 26.
3. Mr Self confirmed that Allegation 18 pre-dated the Claim form and was in time. Allegation 20, 22 and 23 post dated the Claim form however, Mr Self indicated that at the final hearing he will contend after the hearing of relevant evidence that such Claims are out of time and that it is not just and equitable to extend time. In respect of Allegations 24-26 Mr Self confirmed that they post dated the Claim form and that all such Claims were in time.
4. The claimant was anxious to enquire as to whether he could by way of relevant background evidence raise matters that preceded the Tribunal's finding of disability as from 3 November 2011. Mr Self having indicated without prejudice to his general denial of any liability owed to the claimant that if the claimant established inappropriate behaviour suffered by the claimant prior to 3 November 2011, the fact that such behaviour continued after 3 November 2011 will be clear evidence that such treatment was not linked to the claimant's disability.
5. The claimant was anxious to consider his position in this regard, and Mr Self acknowledged that it was reasonable to afford the claimant some time to obtain necessary legal advice. Mr Self reminded the Tribunal that the claimant had been seeking legal advice for a significant number of months to no effect.
6. In order to accommodate the claimant it was agreed that there would be a further telephone Case Management Discussion on 28 January 2013 commencing at 10.00am (time estimate one hour) by which time the claimant would have obtained some advice and would be available to further clarify the issues on the basis of the complaints advanced, and assist in

REASONS

1. Having determined that the claimant was disabled as at 3 November 2011, it necessarily followed that many of the claimant's complaints pre-dated a date when he became disabled. The claimant was anxious to amend his Claim form to raise additional matters of complaint many of which post dated the issuing of his Claim form on 14 November 2011. Mr Self on behalf of the respondent sought a brief adjournment to consider initially his position and to consult with the claimant in relation to the outstanding allegations that could be pursued.
2. The parties returned to agree that the outstanding allegations that were to be pursued before the Tribunal at a final hearing were those contained in a Schedule of Allegations served by the claimant upon the respondent on 11 December 2012 namely Allegations 18, 20, 22, 23, 24, 25 and 26.
3. Mr Self confirmed that Allegation 18 pre-dated the Claim form and was in time. Allegation 20, 22 and 23 post dated the Claim form however, Mr Self indicated that at the final hearing he will contend after the hearing of relevant evidence that such Claims are out of time and that it is not just and equitable to extend time. In respect of Allegations 24-26 Mr Self confirmed that they post dated the Claim form and that all such Claims were in time.
4. The claimant was anxious to enquire as to whether he could by way of relevant background evidence raise matters that preceded the Tribunal's finding of disability as from 3 November 2011. Mr Self having indicated without prejudice to his general denial of any liability owed to the claimant that if the claimant established inappropriate behaviour suffered by the claimant prior to 3 November 2011, the fact that such behaviour continued after 3 November 2011 will be clear evidence that such treatment was not linked to the claimant's disability.
5. The claimant was anxious to consider his position in this regard, and Mr Self acknowledged that it was reasonable to afford the claimant some time to obtain necessary legal advice. Mr Self reminded the Tribunal that the claimant had been seeking legal advice for a significant number of months to no effect.
6. In order to accommodate the claimant it was agreed that there would be a further telephone Case Management Discussion on 28 January 2013 commencing at 10.00am (time estimate one hour) by which time the claimant would have obtained some advice and would be available to further clarify the issues on the basis of the complaints advanced, and assist in

relation to the giving of any necessary directions with a view to preserving the existing hearing dates 22 – 24 April 2013.

M.P. Kolanko

Employment Judge Kolanko

JUDGMENT, REASONS SENT TO THE PARTIES ON

07 JANUARY 2013

R Partridge

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS

6422/9

Case Number: 3103864/2011



EMPLOYMENT TRIBUNALS

Claimant: Sergeant May
Respondent: Chief Constable of Hampshire Constabulary
Heard at: Southampton **On:** 3 January 2013
Before: Employment Judge Kolanko

Representation:

Claimant: In Person
Respondent: Mr G Self of Counsel

JUDGMENT having been sent to the parties on 7 January 2013 and reasons having been requested in accordance with Rule 30(5) of the Rules of Procedure 2004.

REASONS

1. This matter comes before me by way of a Pre-Hearing Review to determine as to whether the Claimant was disabled at the relevant time within the meaning of the Equality Act 2010.
2. At an earlier Case Management Discussion Hearing the Claimant was directed to provide a statement of the effect of his alleged disability on his normal day to day activities and to provide medical evidence that he was seeking to rely upon at any hearing on the issue of disability. This the Claimant has largely done albeit that one report namely from his GP was provided to the Respondent and the Tribunal on the day of this hearing.



EMPLOYMENT TRIBUNALS

Claimant: Sergeant May
Respondent: Chief Constable of Hampshire Constabulary
Heard at: Southampton **On:** 3 January 2013
Before: Employment Judge Kolanko

Representation:

Claimant: In Person
Respondent: Mr G Self of Counsel

JUDGMENT having been sent to the parties on 7 January 2013 and reasons having been requested in accordance with Rule 30(5) of the Rules of Procedure 2004.

REASONS

1. This matter comes before me by way of a Pre-Hearing Review to determine as to whether the Claimant was disabled at the relevant time within the meaning of the Equality Act 2010.
2. At an earlier Case Management Discussion Hearing the Claimant was directed to provide a statement of the effect of his alleged disability on his normal day to day activities and to provide medical evidence that he was seeking to rely upon at any hearing on the issue of disability. This the Claimant has largely done albeit that one report namely from his GP was provided to the Respondent and the Tribunal on the day of this hearing.

3. At the outset of this Hearing the Respondent conceded that the Claimant was a disabled person within the meaning of the Equality Act 2010 as from 3 November 2011, on the basis that the Claimant suffered from a psychiatric disorder, alternatively mental impairment that had, by that date, lasted twelve months. Alternatively, it was conceded that as at that date it was likely to last in excess of twelve months. The Respondent therefore contended that the Tribunal had no jurisdiction to hear any complaints of disability discrimination prior to 3 November 2011.
4. In its closing submissions the Respondent indicated that it was not conceding that as at 7 September 2010 the Claimant's condition was such that it had a substantial adverse effect upon his normal day to day activities although did not seek to go behind Dr Shand's view that as of 3 November it had lasted in excess of twelve months.
5. I received in evidence a statement of evidence from the Claimant of the effect of his condition on normal day to day activities. I also heard oral evidence from the Claimant. Medical evidence was helpfully provided by the Claimant and incorporated into a bundle comprising 68 pages. Not all the documents were referred to me by the parties and primarily I was invited to consider the medical report of the Claimant's GP, Dr Hueppe, dated 20 December 2012 and a detailed Consultant's Occupational Health report from Dr Shand dated 7 December 2012. From the evidence that was received by the Tribunal I make the following relevant findings of fact in this case.
 - 5.1. During the employment with the Respondent the Claimant sometime in January 2002 alleges that he was diagnosed with post-traumatic stress disorder which had lasted in excess of twelve months and the Claimant underwent, as part of the therapy, cognitive behaviour therapy.
 - 5.2. On 29 June 2010 the Claimant was absent from work due to a back pain and attendant anxiety as a result of the problems with his back.
 - 5.3. Effectively a month later on 28 July 2010 the Claimant returned to work on reduced hours which were gradually increased.
 - 5.4. Two months later, on 7 September 2010, the Claimant was seen by Occupational Health and was there assessed fit to return to full duties. The Occupational Health nurse noting that "*Gary has reported anxiety today but did not wish to discuss this further*". I observe and interpose at this stage that the Claimant's GP report which was compiled for the purposes of these proceedings refers to that date as the date when the Claimant presented with an anxiety disorder.

- 5.5. It appears that effectively a week later on 15 September 2010, following an incident concerning a line manager on 14 September 2010, the Claimant was off sick until February 2011.
- 5.6. On 11 February 2011 the Claimant returned to work on restricted duties and it appears, according to the Claimant's evidence, although it is not supported by any of the documentation before me, sometime in March 2011 or thereabouts the Claimant alleges that he undertook six months of private psychotherapy.
- 5.7. On 7 July 2011 the Claimant saw the Consultant Occupational Health advisor, Dr Shand, and in a subsequent report which referred to the meeting on 7 July 2011, he noted that the Claimant had returned to work four months' earlier, and was experiencing problems with confidence and self-esteem, and the Claimant was noted as emotionally vulnerable and unfit to return at that stage to frontline duties. The diagnosis made by Dr Shand was that the Claimant had an anxiety disorder with a diagnosis that would resolve in the immediate short-term.
- 5.8. On 14 September 2011, two months after seeing Dr Shand, there was an incident which resulted in the Claimant going off sick again until 6 April 2012. I was informed that the Claimant was, at that juncture, prescribed *Sutalapram* but did not use it other than for initial stages as the medication did not appear to agree with him.
- 5.9. On 28 October 2011 a sick note was presented indicating that the Claimant was suffering from stress related illness precipitated by bullying and harassment at work.
- 5.10. On 3 November 2011 the Claimant had his second consultation with Dr Shand and a note prepared by Dr Shand for the purposes of these proceedings noted, in relation to that consultation, that the Claimant had been absent from work due to a re-emergence of psychological health problems. It recorded "*PS May was of the view that his direct line manager was actively seeking to impede his rehabilitation into the workplace.*" The diagnosis made by Dr Shand was of an adjustment disorder with prominent features of anxiety, and, indeed, it is that diagnosis coupled with the record of Dr Shand that that condition had been in existence for twelve months that forms the basis upon which the Respondent makes its concession within these proceedings.
- 5.11. Effectively some seven days thereafter the Claimant lodged his Employment Tribunal claim on 14 November 2011.

- 5.5. It appears that effectively a week later on 15 September 2010, following an incident concerning a line manager on 14 September 2010, the Claimant was off sick until February 2011.
- 5.6. On 11 February 2011 the Claimant returned to work on restricted duties and it appears, according to the Claimant's evidence, although it is not supported by any of the documentation before me, sometime in March 2011 or thereabouts the Claimant alleges that he undertook six months of private psychotherapy.
- 5.7. On 7 July 2011 the Claimant saw the Consultant Occupational Health advisor, Dr Shand, and in a subsequent report which referred to the meeting on 7 July 2011, he noted that the Claimant had returned to work four months' earlier, and was experiencing problems with confidence and self-esteem, and the Claimant was noted as emotionally vulnerable and unfit to return at that stage to frontline duties. The diagnosis made by Dr Shand was that the Claimant had an anxiety disorder with a diagnosis that would resolve in the immediate short-term.
- 5.8. On 14 September 2011, two months after seeing Dr Shand, there was an incident which resulted in the Claimant going off sick again until 6 April 2012. I was informed that the Claimant was, at that juncture, prescribed *Sutalapram* but did not use it other than for initial stages as the medication did not appear to agree with him.
- 5.9. On 28 October 2011 a sick note was presented indicating that the Claimant was suffering from stress related illness precipitated by bullying and harassment at work.
- 5.10. On 3 November 2011 the Claimant had his second consultation with Dr Shand and a note prepared by Dr Shand for the purposes of these proceedings noted, in relation to that consultation, that the Claimant had been absent from work due to a re-emergence of psychological health problems. It recorded "*PS May was of the view that his direct line manager was actively seeking to impede his rehabilitation into the workplace.*" The diagnosis made by Dr Shand was of an adjustment disorder with prominent features of anxiety, and, indeed, it is that diagnosis coupled with the record of Dr Shand that that condition had been in existence for twelve months that forms the basis upon which the Respondent makes its concession within these proceedings.
- 5.11. Effectively some seven days thereafter the Claimant lodged his Employment Tribunal claim on 14 November 2011.

- 5.12. On 1 February 2012 the Claimant alleges that his GP referred him to a mental health team, again no reference is made in the medical reports enclosed, and it is not perhaps relevant to my determination of the issue in this case.
- 5.13. For completeness on 6 April 2012 the Claimant returned to work on restricted duties and was, as from November 2012, back working a full forty hour week but not on full duties. Those are basically the background facts to this case.
6. I have regard to the relevant statutory provisions, in particular Section 6 of the Equality Act 2010 which defines disability as including a mental impairment which has a substantial long term adverse effect on the Claimant's ability to carry out normal day to day activities. Schedule 1 to the Act provides more detail and guidance in relation to disability, which states in relation to long term effects that the effect of an impairment is long term if
- a) it has lasted for at least 12 months,
 - b) it is likely to last for at least 12 months,
 - c) it is likely to last the rest of life of the person affected.
7. The Claimant's evidence and submissions before me indicated that the description of the adverse effects of his condition on his normal day to day activities, which is very fully recited in his statement, occurred effectively from 14 September 2010. Whilst acknowledging that the symptoms may have commenced at that time, I am not satisfied in view of the description and the severity contained within his statement contrasted with the Claimant's instances of return to work ultimately on full working hours, that the narrative of the effects of the normal day to day activities recited in his statement are entirely accurate, although I acknowledge that at times the severity that he describes in his statement was quite substantial and significant. It was significant that the claimant did not give date details in relation to the effect of his condition on his daily activities in his statement
8. The Claimant, in his submissions before me, relies upon a medical condition encountered in 2001/2002 of post traumatic stress disorder as the basis for saying that his condition, as at that stage, was likely to recur. The position in relation to whether a condition is likely to recur for the purposes of an impairment that had ceased to have substantial adverse effect under Schedule 1 received some helpful guidance from the President, Mr Justice Underhill, in the case of *J v DLA Piper UK LLP*

- 5.12. On 1 February 2012 the Claimant alleges that his GP referred him to a mental health team, again no reference is made in the medical reports enclosed, and it is not perhaps relevant to my determination of the issue in this case.
- 5.13. For completeness on 6 April 2012 the Claimant returned to work on restricted duties and was, as from November 2012, back working a full forty hour week but not on full duties. Those are basically the background facts to this case.
6. I have regard to the relevant statutory provisions, in particular Section 6 of the Equality Act 2010 which defines disability as including a mental impairment which has a substantial long term adverse effect on the Claimant's ability to carry out normal day to day activities. Schedule 1 to the Act provides more detail and guidance in relation to disability, which states in relation to long term effects that the effect of an impairment is long term if
- a) it has lasted for at least 12 months,
 - b) it is likely to last for at least 12 months,
 - c) it is likely to last the rest of life of the person affected.
7. The Claimant's evidence and submissions before me indicated that the description of the adverse effects of his condition on his normal day to day activities, which is very fully recited in his statement, occurred effectively from 14 September 2010. Whilst acknowledging that the symptoms may have commenced at that time, I am not satisfied in view of the description and the severity contained within his statement contrasted with the Claimant's instances of return to work ultimately on full working hours, that the narrative of the effects of the normal day to day activities recited in his statement are entirely accurate, although I acknowledge that at times the severity that he describes in his statement was quite substantial and significant. It was significant that the claimant did not give date details in relation to the effect of his condition on his daily activities in his statement
8. The Claimant, in his submissions before me, relies upon a medical condition encountered in 2001/2002 of post traumatic stress disorder as the basis for saying that his condition, as at that stage, was likely to recur. The position in relation to whether a condition is likely to recur for the purposes of an impairment that had ceased to have substantial adverse effect under Schedule 1 received some helpful guidance from the President, Mr Justice Underhill, in the case of *J v DLA Piper UK LLP*

reported in 2010 IRLR. At paragraph 45 he recites the following helpful guidance which it seems to me relevant in this case. He was contrasting two forms of what he described as "*extreme examples for the purposes of making his point*". He stated:

"Take the first, the case of a woman who suffers a depressive illness in her early twenties, the illness lasts for over a year, has a serious impact on her ability to carry out normal day to day activities but she makes a complete recovery and is thereafter symptom free for thirty years at which point she suffers a second depressive illness. It appears to be the case that statistically the fact of the earlier illness means that she was more likely than a person without such history to suffer a further episode of depression. Nevertheless it does not seem to us that for that reason alone she can be said during the intervening thirty years to be suffering from a mental impairment presumably to be characterised as vulnerability to depression or something of that kind. Rather the model is of someone who has suffered two distinct illnesses or impairments at different points in her life. Our second example is of a woman who over say a five year period suffered several short episodes of depression which have a substantial adverse impact on her ability to carry out normal day to day activities but who between those episodes is symptom free and does not require treatment. In such a case it may be appropriate, though the question is one which medical evidence will be required, to regard her as suffering from a mental impairment throughout the period in question i.e. even between episodes. The model would be not of a number of discrete illnesses but of a single condition producing recurrent symptomatic episodes. In the former case the issue of whether the second illness amounted to a disability would fall to be answered simply by reference to the degree and duration of the adverse effects of that illness but in the latter the woman could, if the medical evidence supported the diagnosis of a condition producing recurrent symptomatic episodes, properly claim to be disabled throughout the period even if such individual episodes were too short for its adverse effects, including deduced effects, to be regarded as long term. She could invoke Paragraph 22, Schedule 1 provided she could show the effects were likely to recur".

9. Mr Justice Underhill specified in both forms of example the importance and need of medical evidence to facilitate a conclusion to that effect by any Tribunal. In the present case there is no medical evidence to support the contention that the condition in 2002 was likely to recur and manifest itself in the symptoms subsequently experienced in 2010. Indeed, such evidence as there is, points away from such an assertion, bearing in mind that the Claimant's GP, whilst noting the earlier episode of anxiety in 2001, indicates that the Claimant suffers from an anxiety disorder which presented itself not in 2001 but September 2010. I am satisfied on the evidence before me that the Claimant's symptoms commenced as at September 2010. It is noteworthy that the Occupational Health advice, at the time, was to the effect that the Claimant was fit to resume full Level 1 duties at that stage. I interpose to observe that had the Occupational Nurse, Sally Williams been asked whether the condition at that stage was likely to last twelve months, I feel confident that she would have concluded that that was not anticipated. Similarly when the Claimant presented himself to Dr Shand on 7 July 2011 he was diagnosed as having an anxiety disorder which was expected to resolve.

reported in 2010 IRLR. At paragraph 45 he recites the following helpful guidance which it seems to me relevant in this case. He was contrasting two forms of what he described as "*extreme examples for the purposes of making his point*". He stated:

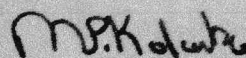
"Take the first, the case of a woman who suffers a depressive illness in her early twenties, the illness lasts for over a year, has a serious impact on her ability to carry out normal day to day activities but she makes a complete recovery and is thereafter symptom free for thirty years at which point she suffers a second depressive illness. It appears to be the case that statistically the fact of the earlier illness means that she was more likely than a person without such history to suffer a further episode of depression. Nevertheless it does not seem to us that for that reason alone she can be said during the intervening thirty years to be suffering from a mental impairment presumably to be characterised as vulnerability to depression or something of that kind. Rather the model is of someone who has suffered two distinct illnesses or impairments at different points in her life. Our second example is of a woman who over say a five year period suffered several short episodes of depression which have a substantial adverse impact on her ability to carry out normal day to day activities but who between those episodes is symptom free and does not require treatment. In such a case it may be appropriate, though the question is one which medical evidence will be required, to regard her as suffering from a mental impairment throughout the period in question i.e. even between episodes. The model would be not of a number of discrete illnesses but of a single condition producing recurrent symptomatic episodes. In the former case the issue of whether the second illness amounted to a disability would fall to be answered simply by reference to the degree and duration of the adverse effects of that illness but in the latter the woman could, if the medical evidence supported the diagnosis of a condition producing recurrent symptomatic episodes, properly claim to be disabled throughout the period even if such individual episodes were too short for its adverse effects, including deduced effects, to be regarded as long term. She could invoke Paragraph 22, Schedule 1 provided she could show the effects were likely to recur".

9. Mr Justice Underhill specified in both forms of example the importance and need of medical evidence to facilitate a conclusion to that effect by any Tribunal. In the present case there is no medical evidence to support the contention that the condition in 2002 was likely to recur and manifest itself in the symptoms subsequently experienced in 2010. Indeed, such evidence as there is, points away from such an assertion, bearing in mind that the Claimant's GP, whilst noting the earlier episode of anxiety in 2001, indicates that the Claimant suffers from an anxiety disorder which presented itself not in 2001 but September 2010. I am satisfied on the evidence before me that the Claimant's symptoms commenced as at September 2010. It is noteworthy that the Occupational Health advice, at the time, was to the effect that the Claimant was fit to resume full Level 1 duties at that stage. I interpose to observe that had the Occupational Nurse, Sally Williams been asked whether the condition at that stage was likely to last twelve months, I feel confident that she would have concluded that that was not anticipated. Similarly when the Claimant presented himself to Dr Shand on 7 July 2011 he was diagnosed as having an anxiety disorder which was expected to resolve.

10. I have, had regard to the guidance contained in the Court of Appeal decision in *Richmond Adult Community College v MacDougall* 2008 IRLR 232. The Court of Appeal reviewed the principles to be applied and approved the guidance of Mr Justice Elias in the case of *Spence v Intype Libra Ltd* [2007] All England Reports, page 261 where Mr Justice Elias gave the following guidance which is apposite to this case.

"We recognise that in practice it may be difficult for a Tribunal to disregard evidence which shows how the medical position did in fact progress but it is important that they should do so. Logically, subsequent events cannot be material, if an employer dismisses someone who has a disability likely to last twelve months, it cannot alter the position if the employee shortly thereafter makes an unexpected recovery before the twelve months has lapsed. Similarly an employee who is not disabled when the alleged unlawful conduct occurred cannot retrospectively be found to have been disabled at that time because he takes an unexpected turn for the worse. If, contrary to our view, subsequent evidence has any materiality at all it can only be to confirm or reinforce a conclusion about disability which the Tribunal has already reached by relying on the evidence which would have been available at the relevant time".

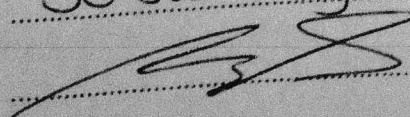
11. Applying such guidance in this case, it appears that from 7 July 2011 until the second consultation with Dr Shand on 3 November 2011, there appears to have been, what in layman's terms may be described as a deterioration in the Claimant's condition, with a diagnosis moving on to adjustment disorder with prominent features of anxiety and, as I have stated earlier, it was on the basis of that diagnosis that the concession had been made at the outset by the Respondent. In the absence of any medical evidence on the matter, it is quite impossible for me to fix a time when the deterioration was such that a change from a prognosis of expectation of early resolution turned to the likelihood of the condition lasting for at least twelve months. Given this uncertainty, I have come to the conclusion that the concession made by the Respondent, based upon the medical evidence of Dr Shand to the effect that the Claimant was disabled as from November 2011, on the basis that it had persisted for in excess of twelve months is the only proper conclusion that can be reached on the evidence before me, so I determine that the Claimant was disabled as from 3 November 2011.



Employment Judge Kolanko

REASONS SENT TO THE PARTIES ON

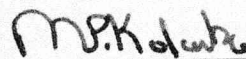
30 January 2013



10. I have, had regard to the guidance contained in the Court of Appeal decision in *Richmond Adult Community College v MacDougall* 2008 IRLR 232. The Court of Appeal reviewed the principles to be applied and approved the guidance of Mr Justice Elias in the case of *Spence v Intype Libra Ltd* [2007] All England Reports, page 261 where Mr Justice Elias gave the following guidance which is apposite to this case.

"We recognise that in practice it may be difficult for a Tribunal to disregard evidence which shows how the medical position did in fact progress but it is important that they should do so. Logically, subsequent events cannot be material, if an employer dismisses someone who has a disability likely to last twelve months, it cannot alter the position if the employee shortly thereafter makes an unexpected recovery before the twelve months has lapsed. Similarly an employee who is not disabled when the alleged unlawful conduct occurred cannot retrospectively be found to have been disabled at that time because he takes an unexpected turn for the worse. If, contrary to our view, subsequent evidence has any materiality at all it can only be to confirm or reinforce a conclusion about disability which the Tribunal has already reached by relying on the evidence which would have been available at the relevant time".


11. Applying such guidance in this case, it appears that from 7 July 2011 until the second consultation with Dr Shand on 3 November 2011, there appears to have been, what in layman's terms may be described as a deterioration in the Claimant's condition, with a diagnosis moving on to adjustment disorder with prominent features of anxiety and, as I have stated earlier, it was on the basis of that diagnosis that the concession had been made at the outset by the Respondent. In the absence of any medical evidence on the matter, it is quite impossible for me to fix a time when the deterioration was such that a change from a prognosis of expectation of early resolution turned to the likelihood of the condition lasting for at least twelve months. Given this uncertainty, I have come to the conclusion that the concession made by the Respondent, based upon the medical evidence of Dr Shand to the effect that the Claimant was disabled as from November 2011, on the basis that it had persisted for in excess of twelve months is the only proper conclusion that can be reached on the evidence before me, so I determine that the Claimant was disabled as from 3 November 2011.



Employment Judge Kolanko

REASONS SENT TO THE PARTIES ON

30 January 2013



Case Number: 3103864/2011

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS

10/10/2011

Case Number: 3103864/2011

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS

6605/130

Case No:3103864/2011



EMPLOYMENT TRIBUNALS

Claimant: Serg G P May

Respondent: Chief Constable of Hampshire Constabulary

JUDGMENT

The proceedings are dismissed following a withdrawal of the claim by the claimant.

Employment Judge

29.11.13

JUDGMENT SENT TO THE PARTIES ON

09.12.13

FOR THE TRIBUNAL OFFICE

3. At the outset of this Hearing the Respondent conceded that the Claimant was a disabled person within the meaning of the Equality Act 2010 as from 3 November 2011, on the basis that the Claimant suffered from a psychiatric disorder, alternatively mental impairment that had, by that date, lasted twelve months. Alternatively, it was conceded that as at that date it was likely to last in excess of twelve months. The Respondent therefore contended that the Tribunal had no jurisdiction to hear any complaints of disability discrimination prior to 3 November 2011.
4. In its closing submissions the Respondent indicated that it was not conceding that as at 7 September 2010 the Claimant's condition was such that it had a substantial adverse effect upon his normal day to day activities although did not seek to go behind Dr Shand's view that as of 3 November it had lasted in excess of twelve months.
5. I received in evidence a statement of evidence from the Claimant of the effect of his condition on normal day to day activities. I also heard oral evidence from the Claimant. Medical evidence was helpfully provided by the Claimant and incorporated into a bundle comprising 68 pages. Not all the documents were referred to me by the parties and primarily I was invited to consider the medical report of the Claimant's GP, Dr Hueppe, dated 20 December 2012 and a detailed Consultant's Occupational Health report from Dr Shand dated 7 December 2012. From the evidence that was received by the Tribunal I make the following relevant findings of fact in this case.
 - 5.1. During the employment with the Respondent the Claimant sometime in January 2002 alleges that he was diagnosed with post-traumatic stress disorder which had lasted in excess of twelve months and the Claimant underwent, as part of the therapy, cognitive behaviour therapy.
 - 5.2. On 29 June 2010 the Claimant was absent from work due to a back pain and attendant anxiety as a result of the problems with his back.
 - 5.3. Effectively a month later on 28 July 2010 the Claimant returned to work on reduced hours which were gradually increased.
 - 5.4. Two months later, on 7 September 2010, the Claimant was seen by Occupational Health and was there assessed fit to return to full duties. The Occupational Health nurse noting that "*Gary has reported anxiety today but did not wish to discuss this further*". I observe and interpose at this stage that the Claimant's GP report which was compiled for the purposes of these proceedings refers to that date as the date when the Claimant presented with an anxiety disorder.

relation to the giving of any necessary directions with a view to preserving the existing hearing dates 22 – 24 April 2013.

M.P. Kolanko

Employment Judge Kolanko

JUDGMENT, REASONS SENT TO THE PARTIES ON

07 JANUARY 2013

R Partridge

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS